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8. **BEFORE THE**
9. **BOARD OF REGISTERED NURSING**
10. **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11. In the Matter of the Accusation Against:

12. **NICHOLAS JOSEPH OCONNOR**
13. 27671 Taryn Drive
Saugus, CA 91350

14. Registered Nurse License No. 733266

15. Respondent.

Case No. **2012-37**

A C C U S A T I O N

16.
17. Complainant alleges:

18. **PARTIES**

19. 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20. official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21. Consumer Affairs.

22. 2. On or about July 31, 2008, the Board of Registered Nursing (Board) issued
23. Registered Nurse License No. 733266 to Nicholas Joseph Oconnor (Respondent). The Registered
24. Nurse License was in full force and effect at all times relevant to the charges brought herein and
25. will expire on December 31, 2011, unless renewed.

26. **JURISDICTION**

27. 3. This Accusation is brought before the Board under the authority of the following
28. laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

“(a) Unprofessional conduct,

....

“(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.”

8. Section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

“(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to

1 himself or herself, any other person, or the public or to the extent that such use impairs his or her
2 ability to conduct with safety to the public the practice authorized by his or her license.

3 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
4 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
5 or the possession of, or falsification of a record pertaining to, the substances described in
6 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
7 thereof."

8 REGULATORY PROVISIONS

9 9. California Code of Regulations, title 16, section 1444 states, in pertinent part:

10 "A conviction or act shall be considered to be substantially related to the qualifications,
11 functions or duties of a registered nurse if to a substantial degree it evidences the present or
12 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
13 safety, or welfare."

14 COST RECOVERY

15 10. Section 125.3 provides, in pertinent part, that the Board may request the
16 administrative law judge to direct a licentiate found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case.

19 FIRST CAUSE FOR DISCIPLINE

20 (Convictions of Substantially Related Crimes)

21 11. Respondent is subject to disciplinary action under section 2761, subdivision (f) and
22 490, in conjunction with California Code of Regulations, title 16, section 1444, in that
23 Respondent has been convicted of crimes substantially related to the qualifications, functions, or
24 duties of a registered nurse.

25 a. On or about March 18, 2009, Respondent was convicted of his *nolo contendere* plea
26 to one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
27 while having 0.08% and more, by weight, of alcohol in his blood] in the criminal proceeding
28 entitled *The People of the State of California v. Nicholas Joseph Oconnor* (Super. Ct. Los

1 Angeles County, 2009, No. 9NW00619). The Court placed Respondent on 36 months probation,
2 with terms and conditions. The circumstances surrounding the conviction are that on or about
3 December 14, 2008, Respondent drove a vehicle and made a wrong turn onto the railroad tracks.
4 While speaking to Respondent, the Los Angeles County Sheriff's Department Officer observed
5 Respondent to have slurred speech, bloodshot eyes, and a strong odor of alcohol on his breath.
6 During the booking procedure, Respondent submitted to a blood test that resulted in a blood-
7 alcohol content level of 0.15%.

8 b. On or about August 9, 2010, Respondent was convicted of his *nolo contendere* plea to
9 one count of violating Penal Code section 415 [disturbance of peace], an infraction, in the
10 criminal proceeding entitled *The People of the State of California v. Nicholas Joseph Oconnor*

11 (Super. Ct. Los Angeles County, 2010, No. ONW01953). The circumstances surrounding the
12 conviction are that on or about April 11, 2010, the Los Angeles County Sheriff's Department
13 received a suspicious person call alleging Respondent was ringing doorbells in the neighborhood
14 at 0430 hours. Upon arrival, the officer observed Respondent stagger on the sidewalk with no
15 pants and wearing only one shoe. While speaking to Respondent, the officer detected a strong
16 odor of an alcoholic beverage emitting from his breath and person. He had slow and slurred
17 speech, and bloodshot, droopy, and glassy eyes. Respondent admitted he was ringing doorbells
18 and that he felt drunk.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Dangerous Use of Alcohol)**

21 12. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
22 defined in section 2762, subdivision (b), in that Respondent used alcoholic beverages to an extent
23 or in a manner dangerous or injurious to himself, another person, or the public. Complainant
24 refers to, and by this reference incorporates, the allegations set forth above in paragraph 11, as
25 though set forth fully.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Convictions Involving the Consumption of Alcohol)**

3 13. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
4 defined in section 2762, subdivision (c), in that on or about, March 18, 2009 and August 9, 2010,
5 Respondent was convicted of crimes involving the consumption of alcohol. Complainant refers
6 to, and by this reference incorporates, the allegations set forth above in paragraph 11, as though
7 set forth fully.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board issue a decision:

- 11 1. Revoking or suspending Registered Nurse License No. 733266, issued to Nicholas
12 Joseph Oconnor;
- 13 2. Ordering Nicholas Joseph Oconnor to pay the Board the reasonable costs of the
14 investigation and enforcement of this case, pursuant to section 125.3; and
- 15 3. Taking such other and further action as deemed necessary and proper.

16 DATED:

17 July 19, 2011

18 Louise R. Bailey
19 LOUISE R. BAILEY, M.ED., RN
20 Executive Officer
21 Board of Registered Nursing
22 Department of Consumer Affairs
23 State of California
24 Complainant

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